IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

AO/833/2006

SANJAY DAJIBA WAGH ... Appellant
V/S
SHRI SANJAY GOEL AND ORS. ... Respondents

Mr. P. K. Dhakephalkar Sr. Counsel for
K. P. ANILKUMAR for appellants .

Mr. A. K. Abhyankar Sr. Counsel with
Mr. SURESH S. PAKALE for respondent no.1.
Mr. N. Engineer with Mr. F. Lakdawala i/b. Divya Shah Associates for O.N.G.C.

CORAM: D. G. KARNIK **J.**

DATE: December 11, 2006

P.C.:

1. Heard learned counsel for the appearing parties.

2. This appeal is directed against the ad interim order dated 28th November 2006 as modified by the subsequent order dated 30th November 2006, passed by the City Civil Court , Mumbai.

3. Mr. Dhakephalkar for the appellant submitted that in substance the effect of the impugned order is to stay the order

passed by the City Civil Court in the previous suit no.4685 of 2006 which could not have been done by the court at the ad interim stage. He secondly submitted that in any event the court ought not to have stayed the earlier order dated 8th November 2006 passed in S.C. Suit no.4685 of 2006 at the ad interim stage as said stay would virtually amount to a mandatory direction which could not be given at the interlocutory stage.

4. In Dorab Cawasji Warden vs. Coomi Sorab Warden reported in AIR 1990 SC 867 the Supreme Court has held that the court is competent to pass mandatory order even at the interlocutory stage.

5. Respondent no.1 who is the plaintiff in the present suit was not a party to the previous suit No. 4685 of 2006. Obviously, therefore, the order in the previous suit would not bind him. Secondly there appears to be substance in the contention of the respondent no.1 that suit no.4685 of 2006 was collusive and the order was procured conclusively. Firstly he was not joined as a party to the suit. Secondly the order was passed as minutes of the order indicating therein that it was a consent order. Respondent no.3 having assumed the charge of the office of the President for half of the term i.e. one year out of the two years, appears to be interested to continue to hold the post as President and therefore he got instituted the previous suit through his nominee, the present appellant.

6. There is one more reason for not entertaining the appeal. The appeal is against ad interim order and the motion is made returnable on 8th January 2007. The appellant can put up his grievances at the hearing of the motion. He may also request the court even for pre-poning the date of hearing of the motion, if he desires. I see no reason to entertain the appeal against an ad interim order, in the facts and circumstances of the case.

7. For these reasons the appeal is dismissed summarily.

(D.G. KARNIK J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil application No. 1149 of 2006

in

AO/833/2006

SANJAY DAJIBA WAGH ... Appellant
V/S
SHRI SANJAY GOEL AND ORS. ... Respondents

Mr. P. K. Dhakephalkar Sr. Counsel for
K. P. ANILKUMAR for appellants .

Mr. A. K. Abhyankar Sr. Counsel with
Mr. SURESH S. PAKALE for respondent no.1.
Mr. N. Engineer with Mr. F. Lakdawala i/b. Divya Shah Associates
for O.N.G.C.

CORAM: D. G. KARNIK **J.**

DATE: December 11, 2006

P.C.:

In view of the dismissal of the appeal this civil application does not survive and is disposed of.

(D.G. KARNIK J.)